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The **NORTH CAROLINA REGISTER**

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ISSUE DATE: MARCH 15, 1991

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER

Publication Schedule

(April 1991 - December 1992)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
04/01/91	03/11/91	03/18/91	05/01/91	08/01/91
04/15/91	03/22/91	04/01/91	05/15/91	08/01/91
05/01/91	04/10/91	04/17/91	05/31/91	09/01/91
05/15/91	04/24/91	05/01/91	06/14/91	09/01/91
06/03/91	05/10/91	05/17/91	07/03/91	10/01/91
06/14/91	05/23/91	05/31/91	07/14/91	10/01/91
07/01/91	06/10/91	06/17/91	07/31/91	11/01/91
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08/01/91	07/11/91	07/18/91	08/31/91	12/01/91
08/15/91	07/25/91	08/01/91	09/14/91	12/01/91
09/03/91	08/12/91	08/19/91	10/03/91	01/01/92
09/16/91	08/23/91	08/30/91	10/16/91	01/01/92
10/01/91	09/10/91	09/17/91	10/31/91	02/01/92
10/15/91	09/24/91	10/01/91	11/14/91	02/01/92
11/01/91	10/11/91	10/18/91	12/01/91	03/01/92
11/15/91	10/24/91	10/31/91	12/15/91	03/01/92
12/02/91	11/07/91	11/14/91	01/01/92	04/01/92
12/16/91	11/21/91	12/02/91	01/15/92	04/01/92
01/02/92	12/09/91	12/16/91	01/31/92	05/01/92
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03/16/92	02/24/92	03/02/92	04/15/92	07/01/92
04/01/92	03/11/92	03/18/92	05/01/92	08/01/92
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05/01/92	04/10/92	04/17/92	05/31/92	09/01/92
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07/01/92	06/10/92	06/17/92	07/31/92	11/01/92
07/15/92	06/24/92	07/01/92	08/14/92	11/01/92
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08/14/92	07/24/92	07/31/92	09/13/92	12/01/92
09/01/92	08/11/92	08/18/92	10/01/92	01/01/93
09/15/92	08/25/92	09/01/92	10/15/92	01/01/93
10/01/92	09/10/92	09/17/92	10/31/92	02/01/93
10/15/92	09/24/92	10/01/92	11/14/92	02/01/93
11/02/92	10/12/92	10/19/92	12/02/92	03/01/93
11/16/92	10/23/92	10/30/92	12/16/92	03/01/93
12/01/92	11/06/92	11/13/92	12/31/92	04/01/93
12/15/92	11/24/92	12/01/92	01/14/93	04/01/93

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

CHANGE OF HEARING LOCATION FOR THE NOTICE PUBLISHED IN THE NORTH CAROLINA REGISTER, VOLUME 5, ISSUE 20 ON PAGE 1222.

TITLE 21 - OCCUPATIONAL LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-12 that the Board of Medical Examiners of the State of North Carolina intends to amend rule(s) cited as 21 NCAC 32L .0001, .0005, and .0009.

The proposed effective date of this action is May 1, 1991.

The public hearing will be conducted at 6:30 p.m. on March 13, 1991 at the ~~Marriott RTP, 4700 Guardian Drive, Morrisville, N.C.~~ Raleigh Marriott, 4500 Marriott Drive (across from Crabtree Valley Mall), Raleigh, North Carolina.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed before March 1, 1991, to the following address: Administrative Procedures, NC Board of Medical Examiners, 1313 Navaho Drive, Raleigh, NC 27609.

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

SUBCHAPTER 32L - APPROVAL OF PHYSICIAN ASSISTANTS

.0001 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Physician Assistant or PA" means an auxiliary, paramedical person who functions at the direction of or under the supervision of a physician licensed by the Board and who performs tasks traditionally performed by the physician, such as history taking, physical examination, diagnosis, and treatment.
- (2) "Physician Assistant Applicant" means the individual upon whose behalf an application is submitted who may function before approval by the Board in the same manner in which he functioned as a student under strict supervision as outlined in Rule .0002 of this Subchapter.
- (3) "Supervision" means the physician's function of overseeing, managing, and directing the medical acts performed by the PA as outlined in Rule .0009 of this Subchapter.
- (4) "Primary Supervising Physician" means the physician who, by signing the application to the Board, accepts full medical administrative responsibility for the PA's medical activities and conduct at all times whether he personally is providing supervision or supervision is being provided by a Back-up Supervising Physician. The Primary Supervising Physician shall assume total responsibility to assure the Board that the PA is sufficiently qualified by education and training to perform all medical acts required of the PA and shall assume total responsibility for the PA's performance in the particular field or fields in which the PA is expected to perform medical acts.
- (5) "Back-up Supervising Physician" means the physician who, by signing the application to the Board, accepts the responsibility to be available to supervise the PA's activities in the absence of the Primary Supervising Physician only in the practice sites listed in the application approved by the Board. The Back-up Supervising Physician is responsible for the activities of the PA only when he is providing supervision.
- (6) "Formulary" means the document which lists generic categories of drugs to be prescribed, ordered, or dispensed by physician extenders under written standing orders from the supervising physician for patient care in approved practice sites.
- (7) "Approved practice sites" means only those practice sites specifically listed in the approved application on file in the Board's office in which the PA may legally perform medical acts.

Statutory Authority G.S. 90-18(13); 90-18.1.

.0005 PRESCRIBING PRIVILEGES

- (a) The PA Applicant and the supervising physicians shall acknowledge in the application that they are familiar with laws and rules of the Board regarding prescribing; and shall agree to comply with these laws and rules by incorporating the laws and rules, including the Formulary, into their written standing orders.

(b) The generic categories listed in the Formulary are based on the American Hospital Formulary Service published by the American Society of Hospital Pharmacists. The Formulary is adopted by reference by the Board as a part of this Rule in accordance with provisions of G.S. 150B-14(c).

(c) The prescribing stipulations contained in these rules and in the Formulary apply to writing prescriptions, ordering the administration of medications in out-patient and inpatient settings, and dispensing medications. Approval to dispense must be obtained from the Board of Pharmacy.

(d) Prescribing stipulations are as follows:

(1) Controlled Substances:

(A) No controlled substances (Schedules 2, 2N, 3, 3N, 4, 5) defined by the State and Federal Controlled Substances Acts may be prescribed, ordered, or dispensed.

(B) Verbal orders given to the PA by the supervising physician for administration of a controlled substance to a specific patient may be entered into the patient chart by the PA just as an RN may transcribe a physician's verbal order into a patient chart.

(2) Parenteral Medications - No parenteral preparations may be prescribed, ordered, dispensed, or administered unless under the order of the supervising physician as set forth in Subparagraph (3)(B) of this Rule, with the following exceptions:

(A) Insulin;

(B) Immunizations (DPT, MMR, Hib);

(C) Tetanus toxoid, DT, or hyperimmune serum;

(D) Epinephrine;

(E) Benadryl.

(2) Parenteral Medications - No parenteral preparations may be prescribed, ordered, dispensed, or administered unless under the order of the supervising physician as set forth in Paragraph (d)(3)(B) of this Rule with the exception of those medications listed on the Formulary as allowed.

(3) Excluded Drugs:

(A) Any pure form or combination of the generic classes of drugs listed in the Formulary may be prescribed, ordered, or dispensed, unless the drug or class of drug is listed as excluded from the Formulary.

(B) Drugs excluded by the Formulary, except controlled substances, may be prescribed by the PA only upon specific written or verbal orders from the supervising physician for a specific patient given

before the prescription or order is issued by the PA. Such a prescription or order must be signed by the PA with a notation that it is issued on the specific order of the supervising physician. For example: Mary Smith, PA, on order of John Doe, M.D.

(B) The PA may prescribe an excluded drug or class of drug only as follows:

(i) after the patient has been previously seen by the supervising physician for initial treatment of that illness and a written order has been entered into the chart by the physician for future treatment by the PA; or

(ii) upon a specific written or verbal order obtained from the supervising physician before the prescription or order is issued by the PA.

(C) Such a prescription or order written as described in Paragraph (d)(3)(B) of this Rule must be signed by the PA with a notation that it is issued on the specific order of the supervising physician. For example: Mary Smith, PA, on order of John Doe, M.D.

(4) Refills - A prescription may not indicate a refill with the exception of birth control medications which may be issued for a period not to exceed one year.

(5) Dosage Units - Amount of drug prescribed, ordered, or dispensed can be no more than 100 dosage units or a one month supply with the exception of birth control medications which may be issued for a period not to exceed one year.

(6) Prescription Notations - Every prescription must be noted on the patient's chart. A second prescription for the same medication may be authorized by telephone by the PA and must be entered on the patient's chart and countersigned by the supervising physician within the specified countersigning time approved by the Board.

(7) Prescribing Number - A prescribing number is assigned by the Board to a PA upon approval by the Board. This number must appear on all prescriptions issued by the PA. The prescribing number is used as the PA's Approval Number.

(8) Prescription Blank Format - All prescriptions issued by a PA ~~should~~ shall contain the name and telephone number of the supervising physician; the name, practice address, telephone number, and prescribing number of the PA, as well as all information required by law. A sug-

gested prescription format is included in the application packet.

- (9) Pre-signed Prescription Blanks - The supervising physician shall not leave pre-signed prescription forms for use by the PA.

Statutory Authority G.S. 90-18(13); 90-18.1; 150B-14(c).

.0009 SUPERVISION OF A PA

Supervision shall be provided by the responsible physician as follows:

- (1) Availability:
 - (a) The supervising physician shall be available for direct communications by radio, telephone, or telecommunications.
 - (b) The supervising physician shall be available on a regularly scheduled basis for referrals of patients from the PA.
 - (c) ~~A PA shall refer a patient to another health provider other than an approved supervising physician only on the order of an approved supervising physician.~~
- (2) Written Standing Orders:
 - (a) The supervising physician shall provide in each practice location, for use by the PA and for referral by other personnel, written standing orders and drug protocols to cover most commonly encountered problems in the practice setting.
 - (b) The written standing orders shall include a predetermined plan for emergency services.
 - (c) The PA shall refer a patient to another physician other than an approved supervising physician only in accordance with written standing orders.
- (3) Countersigning:
 - (a) The time interval between the PA's contact with the patient and chart review and countersigning by the supervising physician shall be 72 hours.
 - (b) A longer countersigning time interval may be considered by the Board upon specific

request. The request should explain the practice circumstances which necessitate the longer countersigning interval.

- (c) All entries by a PA into patient charts in all approved practice locations must be countersigned by the supervising physician. Entries include but are not limited to: progress notes; treatment rendered; tests or procedures ordered; and notations of prescriptions or orders, and drugs dispensed or administered.
- (4) Supervision Arrangements:
 - (a) If the PA is to perform duties away from the supervising physician, the application must clearly specify the circumstances which would justify this action and the supervisory arrangements established to protect the patient.
 - (b) Details must be submitted describing distance, time, topography, physical characteristics, and communication ability between the PA and the supervising physician.
- (5) Supervising Physicians:
 - (a) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, cannot be named as a supervising physician.
 - (b) A physician in a graduate medical education program who is also practicing in a non-training situation may supervise physician assistants in the non-training situation if fully licensed.
 - (c) All physicians who may supervise the PA in any manner must be approved by the Board before PA supervision occurs.
 - (6) The PA must be prepared to demonstrate upon request to a member of the Board, or its delegates, the ability to perform the medical acts assigned by the supervising physician.

Statutory Authority G.S. 90-18(13).

VOTING RIGHTS ACT FINAL DECISION LETTER

[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice
Civil Rights Division

JRD:SSC:DDC:lrj
DJ 166-012-3
91-0205

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

February 19, 1991

Jesse L. Warren, Esq.
City Attorney
Drawer W-2
Greensboro, North Carolina 27402

Dear Mr. Warren:

This refers to the annexation (Ordinance No. 91-4) to the City of Greensboro in Guilford County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on January 28, 1991.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

J. Gerald Hebert
Acting Chief, Voting Section

**TITLE 10 - DEPARTMENT OF HUMAN
RESOURCES**

Notice is hereby given in accordance with G.S. 150B-12 that the Certificate of Need Section, Div. of Facility Services, Dept. of Human Resources intends to adopt and amend rule(s) cited as 10 NCAC 3R .0320 and .2002.

The proposed effective date of this action is July 1, 1991.

The public hearing will be conducted at 2:00 p.m. on April 16, 1991 at the Division of Facility Services, Room 201, Council Building, 701 Barbour Drive, Raleigh, N. C. 27603.

Comment Procedures: Written comments concerning the rules should be submitted as soon as possible but no later than April 16, 1991 to Jackie Sheppard, 701 Barbour Drive, Raleigh, N. C. 27603. Oral comments may be presented at the hearing.

CHAPTER 3 - FACILITY SERVICES

**SUBCHAPTER 3R - CERTIFICATE OF NEED
REGULATIONS**

**SECTION .0300 - APPLICATION AND REVIEW
PROCESS**

.0320 HOME HEALTH AGENCIES

(a) For those home health agencies for which no certificate of need was issued, the home health agency's geographic service area shall be only those counties in which patients were served as shown on the existing home health agency's licensure renewal form on file with the Licensure Section of the Division of Facility Services as of January 1, 1991.

(b) For those home health agencies for which a certificate of need was issued, the home health agency's geographic service area shall be as follows:

- (1) Where the service area is identified on the certificate of need issued to the home health agency, the agency's geographic service area shall be the service area identified on the certificate of need.
- (2) Where the service area is not identified on the certificate of need issued to the home health agency, the agency's geographic service area shall be the proposed geographic service area which was identified in the application for a certificate of need and approved by the Certificate of Need Section.

Statutory Authority G. S. 131E-177(1); 131E-181; 131E-185.

**SECTION .2000 - CRITERIA AND STANDARDS
FOR HOME HEALTH SERVICES**

.2002 DEFINITIONS

The following definitions in this Rule will apply to all rules in this Section:

- (1) "Home Health Agency" means a private organization or public agency, whether owned or operated by one or more persons or legal entities, which furnishes or offers to furnish home health services. an agency as defined in G.S. 131E-176.
- (2) "Home Health Services" means items and services furnished to an individual by a home health agency, or by others under arrangements made by the agency, on a visiting basis, in a place of temporary or permanent residence used as the individual's home. services as defined in G.S. 131E-176.
- (3) "Proposed Geographic Service Area" means: a county in which a proponent proposes to establish a home health agency or contiguous counties whose boundaries touch the boundary of the county in which the office of the home health agency will be located and whose grouping is consistent with established medical care utilization patterns as defined in the State Medical Facilities Plan.
 - (a) Where the proponent has proposed to establish a home health agency to meet the need projected in the applicable State Medical Facilities Plan for a single county, the single county in which the home health agency will be established; or
 - (b) Where the proponent has proposed to establish a home health agency to meet the need projected in the applicable State Medical Facilities Plan for a grouping of contiguous counties, those contiguous counties defined in the State Medical Facilities Plan in effect at the beginning of the review period for the application and in which the proponent will provide home health services.

Statutory Authority G.S. 131E-177(1).

**TITLE 11 - DEPARTMENT OF
INSURANCE**

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance

intends to amend rule(s) cited as 11 NCAC 8 .0801 - .0802, .0805, .0815; and repeal rule(s) cited as 11 NCAC 8 .0803 - .0804, .0806 - .0814, .0816 - .0818.

The proposed effective date of this action is July 1, 1991.

The public hearing will be conducted at 10:00 a.m. on April 25, 1991 at the N.C. Department of Insurance, Qualifications Board, 410 N. Boylan Avenue, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to Grover Sawyer c/o Qualifications Board, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Grover Sawyer at (919) 733-3901 or Ellen Sprenkel at (919) 733-4700.

CHAPTER 8 - ENGINEERING AND BUILDING CODES DIVISION

SECTION .0800 - DISCIPLINARY ACTIONS: OTHER CONTESTED MATTERS

.0801 DISCIPLINARY POWERS

The North Carolina Code Officials Qualification Board has the power to suspend, revoke, or refuse to grant any certificate to any person who:

- (1) has been convicted of a felony against the State of North Carolina or the United States, or convicted of a felony in another state that would also be felony if it had been committed in this state;
- (2) has obtained certification through fraud, deceit, or perjury;
- (3) has knowingly aided or abetted any person practicing contrary to the provisions of G.S. Chapter 143, Article 9B, or of the state building code;
- (4) has defrauded the public or attempted to do so;
- (5) has affixed his signature to a report of inspection or other instrument of service if no inspection has been made by him or under his immediate and responsible direction; or
- (6) has been guilty of willful misconduct, gross negligence, or gross incompetence.

(a) As used in this Section "Board" means the North Carolina Code Officials Qualification Board; "official" means a qualified Code-enforcement official as defined in G.S. 143-151.8(5); and "Code" means the North Carolina State Building Code.

(b) Any person who believes that an official is or has been in violation of G.S. 143-151.17(a) may file a complaint against that official.

Copies of 11 NCAC 8 .0801 and G.S. 143-151.17 shall be mailed to any person requesting complaint information from the Board.

(c) The complaint must specifically refer to one or more of the grounds in G.S. 143-151.17(a). The name of the official, if known, and the name of the local inspection department must be listed. If the official is unknown, the complaint must refer to "the inspector who performed the building (or electrical, mechanical, or plumbing) inspection."

(d) Supporting information must be included to justify the complaint. If the complaint involves violations of the Code that the official did not discover, a list of those violations must be submitted with the complaint. Such information may be provided by the complainant, an architect, professional engineer, licensed contractor, certified inspector, or other person with knowledge of the Code. Supporting information must refer to specific violations of the Code or of the General Statutes.

(e) The complaint must be in writing, signed by the complainant, and dated. The complaint must include the complainant's mailing address and a daytime phone number at which the complainant may be reached. The street address of the structure must be included. There must be a notarized verification at the end of the complaint.

Statutory Authority G.S. 143-151.12(1); 143-151.17.

.0802 PRELIMINARY INVESTIGATION

On receipt of a verified complaint in writing of any person alleging a violation of a type listed in Rule .0801, the Board conforming to 11 NCAC 8 .0801, the Board's staff shall direct its staff to make an investigation of the charges. If the staff reports that the charges appear to be frivolous and to have no basis in fact, the Board shall so notify the person filing the complaint. If the person filing the complaint then requests a formal hearing of the charges, or if the staff reports that the charges may have some basis in fact, the Board shall fix a time and place for a hearing and give notice to the parties, and proceed in accordance with the provisions in Rules .0803 - .0818.

Statutory Authority G.S. 143-151.17(b).

.0803 NOTICE TO PARTIES (REPEALED)

.0804 EMERGENCY SUSPENSION (REPEALED)

Statutory Authority G.S. 150A-3(b); 150A-3(c); 150A-23(b), (c), (d).

.0805 PRESIDING OFFICER

- (a) The chairman of the board shall designate:
- (1) a member of the Board as hearing officer;
 - (2) three or more members of the Board as a hearing committee; or
 - (3) the full board to hear the case.

(b) On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification by a hearing officer, a member of a hearing committee, or a member of the Board, the person challenged may elect to withdraw and so notify the chairman. If that person refuses to withdraw, the Board shall consider the matter and make a determination as to whether that person should be disqualified, which determination shall become a part of the record in the case and shall be subject to judicial review at the conclusion of the proceeding.

(c) When a hearing officer or a member of a hearing committee withdraws or is disqualified or it is impracticable for him to continue the hearing, the chairman shall designate another member to serve as hearing officer or member of the hearing committee. The new hearing officer or member of the hearing committee will continue with the case unless it is shown that substantial prejudice to any party will result therefrom, in which event a new hearing shall be held or the case dismissed without prejudice.

The Chairman of the Board shall serve as presiding officer. In the absence of the Chairman, the Vice-Chairman shall serve as presiding officer, or a presiding officer shall be elected by the Board.

Statutory Authority G.S. 143-151.12(1).

.0806 CONSOLIDATION OF SEVERAL CASES (REPEALED)

.0807 VENUE OF HEARING (REPEALED)

.0808 POWERS OF HEARING OFFICER: HEARING COMMITTEE: CHAIRMAN (REPEALED)

.0809 ACTIONS PRIOR TO HEARING (REPEALED)

.0810 CONDUCT OF HEARING (REPEALED)

.0811 RULES OF EVIDENCE (REPEALED)

.0812 DISPOSITION OF CASE BY STIPULATION: ETC: OF PARTIES (REPEALED)

.0813 PROPOSAL FOR DECISION (REPEALED)

.0814 OFFICIAL RECORD (REPEALED)

Statutory Authority G.S. 150A-23(e); 150A-24; 150A-25; 150A-25(b); 150A-26; 150A-27;

150A-28(a); 150A-28(b); 150A-29; 150A-30; 150A-31(a); 150A-31(b); 150A-33; 150A-34; 150A-37; 150A-37(b).

.0815 FINAL BOARD ORDER

(a) The final board decision shall be made by the full board. If the Board decides that an official's conduct does not justify the suspension or revocation of his certificate but that his conduct does fail to conform to the standards of good code enforcement practice, the Board may issue a letter of reprimand or a letter of caution to the official in which the Board may summarize those deficiencies and make appropriate recommendations.

(b) The final board decision shall be made only after a full review of the official record and after affording parties an opportunity to contest any proposal for decision prepared by hearing officer or hearing committee, as specified in Rule .0813 of this Chapter.

(c) The final board decision shall be in writing and shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150A-29(a), 150A-30, or 150A-31.

(b) ~~(d)~~ If the decision a final board order is to suspend, revoke, or refuse to issue a certificate, the decision order shall set forth the conditions, if any, which must be met in order to remove the suspension, to re-issue the certificate, or to issue the certificate. No action to remove a suspension or to issue or re-issue a certificate (other than as specified in the decision) order shall be taken without notice to the original parties and an opportunity for them to request a new hearing in accordance with the same procedures specified herein in Chapter 150B of the General Statutes and this Section for the original hearing.

(e) A copy of the final decision shall be served upon each party personally or by registered mail and a copy furnished to his attorney of record.

Statutory Authority G.S. 143-151.12(1); 143-151.17(c).

.0816 JUDICIAL REVIEW (REPEALED)

.0817 APPEALS FROM ADMINISTRATIVE DECISIONS (REPEALED)

.0818 PROHIBITION AGAINST EX PARTE COMMUNICATIONS (REPEALED)

Statutory Authority G.S. 150A, Article 3; 150A, Article 4; 150A-35.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 16 .0102.

The proposed effective date of this action is July 1, 1991.

The public hearing will be conducted at 10:00 a.m. on April 16, 1991 at the Dobbs Building, 430 N. Salisbury Street, Third Floor Hearing Room, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to Ed Jordan, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Ed Jordan at (919) 733-3284 or Ellen Sprengel at (919) 733-4700.

CHAPTER 16 - ACTUARIAL SERVICES DIVISION

SECTION .0100 - FIRE AND CASUALTY STATISTICAL DATA

.0102 LOSS RESERVES

After a company is licensed, approved, or registered to do business in North Carolina and it is deemed necessary for data collection purposes, the Actuarial Services Division will mail to the company forms, instructions, and a diskette so that the company can complete the two requested items involving loss reserve information from the list described in this Rule. The company will have two months from the receipt of the request to comply. (Note: Companies that are part of a group pooling arrangement may submit consolidated information.)

- (1) The reproduction on diskette of the following portions of Schedules O and P of the company's Annual Statements for the years 1981-1988 or for those years during that period when the company was in operation:
 - (a) Schedule O, Parts 3, 4, and 5;
 - (b) Schedule P, Parts 1A through 1F.
- (2) The reproduction on diskette of Schedule P, Parts 1A through 1Q of the company's Annual Statements for the years 1989 and subsequent or for those years during that period when the company was in operation.

- (3) ~~(2)~~ The completion of a series of interrogatories concerning the company's loss reserving practices.

Statutory Authority G.S. 58-2-40; 58-2-190.

TITLE 14A - DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Crime Control and Public Safety, Division of Victim and Justice Services intends to repeal rule(s) cited as 14A NCAC 11 .0503.

The proposed effective date of this action is July 1, 1991.

The public hearing will be conducted at 10:00 a.m. on April 15, 1991 at the Library, Second Floor, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27611.

Comment Procedures: Any interested person may present comments relevant to the action proposed at the public hearing either in writing or oral form. Written statements not presented at the public hearing may be directed prior to the hearing to Wanda D. Goodson, Administrative Procedures Coordinator, First Floor, Archdale Building, 512 N. Salisbury Street, P.O. Box 27687, Raleigh, NC 27611-7687.

CHAPTER 11 - DIVISION OF VICTIM AND JUSTICE SERVICES

SECTION .0500 - CRIME VICTIMS COMPENSATION COMMISSION

.0503 DETERMINING COMPENSATION (REPEALED)

Statutory Authority G.S. 15B-4; 15B-6; 15B-7; 15B-8; 15B-10; 15B-11; S.L. 1987, c. 819, s. 35; Chapter 322, 1989 S.L.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the Board of Medical Examiners of the State of NC intends to amend rule(s) cited as 21 NCAC 32B .0309.

The proposed effective date of this action is September 1, 1991.

The public hearing will be conducted at 8:00 a.m. on May 23, 1991 at the North Raleigh Hilton, 3415 Old Wake Forest Road, Raleigh, NC 27609.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed before May 1, 1991, to the following address: Administrative Procedures, NC Board of Medical Examiners, PO Box 26808, Raleigh, NC 27611-6808.

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

SUBCHAPTER 32B - LICENSE TO PRACTICE MEDICINE

SECTION .0300 - LICENSE BY ENDORSEMENT

.0309 PERSONAL INTERVIEW

To be eligible for license by endorsement of credentials, applicants must appear before the Executive Secretary, a Board member, an agent of the Board, or the full Board for a personal interview upon completion of all credentials.

Statutory Authority G.S. 90-13.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Opticians intends to amend rules cited as 21 NCAC 40 .0202, .0205, .0206, .0307, .0314 and .0319.

The proposed effective date of this action is July 1, 1991.

The public hearing will be conducted at 10:00 a.m. on April 15, 1991 at 412 North Wilmington Street, Raleigh, North Carolina 27601.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. Additionally, the record will be open for receipt of written comments until the hearing. Such written comments must be delivered or mailed to Mr. Willard Barnes, Director, State Board of Opticians, 412 North Wilmington Street, Raleigh, North Carolina 27601-1061.

CHAPTER 40 - BOARD OF OPTICIANS

SECTION .0200 - CONDUCT OF REGISTRANTS

.0202 REGISTRATION OF PLACE OF BUSINESS

Every optical place of business, including each branch office, must be registered with the Board within ten days of the opening date and thereafter in the event of relocation, or change of ownership of the business or licensed optician in charge of the business. Upon registering within the ten day period, an optical place of business must register with the Board on an annual basis. The responsibility for registration is placed upon the licensee as well as the business owner. Only one optical place of business may be operated under the registration of a single licensed optician. Fees for registration shall be governed by Rule .0108. Should the ownership of an optical place of business change, the business must be registered with the Board under the name of the new owner and the registration fee must be paid. Likewise, if there is a change in the licensed optician in charge of the business, the business must register with the Board and the registration fee must be paid. Failure to secure registration of an optical place of business by the licensed optician under whose professional authority that place is operated may subject that optician to suspension or revocation of license. An injunction closing the place of business may also be obtained. An optical place of business registered in accordance with this Rule is eligible for recognition as a training establishment when the requirements of Rules .0304, .0314, and .0321 of this Chapter are met.

Statutory Authority G.S. 90-243; 90-249.

.0205 BAITING OR DECEPTIVE ADVERTISING

(b) If an item or service is advertised for sale but the offer is qualified the qualification must be conspicuously placed in the advertisement. For example, if spectacles or eyeglasses are offered for sale and a second pair is offered at a special or reduced price, the advertisement must state expressly whether the second pair is other than a duplicate of the first pair purchased. Likewise if a picture, illustration or description is included in the advertisement, it must accurately represent the item for sale. Bait advertising is an alluring but insincere offer to sell a product or service which the advertiser does not actually wish to sell at the price advertised. A seller may not in any way discourage the purchase of the advertised product. Specifically, he may not refuse to show or sell the advertised product or disparage the same in an attempt to sell another product. Furthermore, he may not demonstrate

or show an unattractive or shopworn item or product in place of the advertised product. When a product is offered for sale at a discounted price, the discount must be truthful. In order to be truthful, the discounted price must be based upon a bona fide original price. A bona fide original price is established by selling the product at the original price for a majority of the time that the product is offered for sale.

Statutory Authority G.S. 90-249.

.0206 CONTINUING EDUCATION

(b) Each optician shall take a total of not less than eight hours of courses of study each calendar year as follows:

- (1) four hours of study shall be essential to the practice of contact lens fitting, in lieu thereof, three hours of study shall be essential to contact lens fitting and one hour of study may be on business management and consumer protection;
- (2) ~~three~~ four hours of study shall be essential to eyeglass fitting and dispensing. In lieu thereof, three hours of a study shall be essential to eyeglass fitting and dispensing and one hour of study may be on the North Carolina Opticianry Laws and Rules or ethics;
- (3) ~~one hour of study shall be on the North Carolina Opticianry Laws and Rules. If there has been an amendment to the Laws or Rules during the current year, all North Carolina Licensed Opticians practicing opticianry in North Carolina will be required to receive one hour of continuing education on the Laws and Rules relating to such amendment or change.~~

Statutory Authority G.S. 90-249.

SECTION .0300 - QUALIFICATIONS: APPLICATIONS: AND LICENSING

.0307 TIME AND PLACE OF EXAMINATION

Examinations will be held twice each year as announced. Applications must be duly made and filed with the Board 60 days prior to the date of the examination. The fee of one hundred dollars (\$100.00) to sit for licensure examination, as set forth in Rule .0108, must be made in cash, certified check, or money order.

Statutory Authority G.S. 90-240; 90-244.

.0314 APPRENTICESHIP REQUIREMENTS: REGISTRATION OF APPRENTICE

(a) Each apprentice or intern entering the apprenticeship or internship shall register with the

Board and be issued a certificate of registration. If the apprenticeship or internship is to be supervised by an ophthalmologist or optometrist, the supervisor will provide a statement in which he agrees to abide by the same requirements as would an optician providing the same training.

(b) Part-time work or work as an optical salesman or consultant shall not apply toward completion of apprenticeship or internship.

(c) An applicant, through apprenticeship, or internship shall have received his training by working full time, defined as a minimum of 35 hours per week, under the supervision of a licensed optician, ophthalmologist, or optometrist following a curriculum approved by the Board.

(d) No more than two apprentices or interns may be trained by a single optician, ophthalmologist, or optometrist at any time.

(e) An apprentice or intern shall be credited with training time only from the date of registration with the Board as an apprentice or intern. Except as provided by the Board for good cause shown, the apprenticeship or internship may not be interrupted for more than 12 months at the time.

(f) When registering to serve a six month internship, the applicant must have completed the three and one-half years of apprenticeship as required by G.S. 90-240(a)(2) and (3) or have graduated from an approved school of opticianry, as defined in Rule .0312, with a degree of associate in applied science through an ophthalmic dispensing program.

Statutory Authority G.S. 90-249.

.0319 WAIVER OF EXAMINATION

(a) An out-of-state applicant seeking licensure in North Carolina under G.S. 90-241(a) shall tender an application prepared by him to the Board and in connection with same shall furnish affidavits from two persons with whom he worked as an optician for the previous four years. In addition, he shall furnish written statements from two qualified licensed refractionists, either ophthalmologists or optometrists, under oath that he has satisfactorily filled his prescriptions for both spectacle lenses and contact lenses and practiced the profession of opticianry for four years in that state immediately prior to the application. Any application filed by an applicant seeking licensure pursuant to G.S. 90-41(a) must be filed with the Board within 90 days after establishment of residence in North Carolina.

(b) Unless the sworn statements of the refractionists state that the out-of-state applicant has satisfactorily filled their prescriptions for both spectacle lenses and contact lenses, the applicant

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shall be required to take the license examination administered by the Board. An out-of-state applicant shall be required to take the contact lens portion of the examination administered by the Board, unless such applicant documents that he or she has passed a contact lens examination, substantially similar to the contact lens portion of the examination administered by the Board,

administered by the licensing authority in the state in which he or she is licensed, or a national contact lens examination approved by the Board.

Statutory Authority G.S. 90-234; 90-235; 90-236; 90-237; 90-241(a); 90-245; 90-250; 90-252; 90-253.

The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.

*Rules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Rules filed with changes are noted with **** Amended, ** Adopted**. Please contact this office if you have any questions.*

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

Upon request from the adopting agency, the text of rules will be published in this section.

*Punctuation, typographical and technical changes to rules are incorporated into the **List of Rules Codified** and are noted as *** Correction**. These changes do not change the effective date of the rule.*

**TITLE 17
DEPARTMENT OF REVENUE**

CHAPTER 5 - CORPORATE INCOME AND FRANCHISE TAX DIVISION

SUBCHAPTER 5B - FRANCHISE TAX

SECTION .0100 - GENERAL INFORMATION

.0107 EXTENSION OF FILING DATE

(a) Prior to the regular due date, a corporation may apply for an extension of time for filing its return. An extension of time to file the franchise and income tax return may be granted for seven months providing the full amount of franchise tax and income tax anticipated to be due is paid with the timely filed extension application. The extension will be granted automatically provided:

(1) the total tax is remitted with the application form; and

(2) the corporation's records reflect no delinquent returns or outstanding tax liability.

(b) Form CD-419 is the application for extension form that must be filed before an extension of time to file the return can be granted. The application should be completed in duplicate. Interest is charged on all extended tax payments at the rate established pursuant to G.S. 105-241.1(i).

*History Note: Statutory Authority G.S. 105-129; 105-262;
Eff. February 1, 1976;
Amended Eff. April 1, 1991; January 1, 1978.*

SECTION .1100 - CAPITAL STOCK: SURPLUS AND UNDIVIDED PROFITS BASE

.1115 CASH BASIS CORPORATIONS

Corporations using the cash basis method of accounting for income tax purposes may not compute the capital stock, surplus and undivided profits base by this method. Assets and liabilities must be accrued and reported for franchise tax purposes.

*History Note: Statutory Authority G.S. 105-122; 105-258;
Eff. April 1, 1991.*

SUBCHAPTER 5C - CORPORATE INCOME TAX

SECTION .0300 - COMPUTATION OF NET INCOME

.0304 ATTRIBUTION/EXPENSES/NONTAXABLE INCOME//NONBUS INCOME/PRPTY

(a) Direct Expenses - All expenses directly connected with the production of income which is not subject to tax in this State are required to be used to compute the net amount of such untaxed income.

(b) Interest Expenses - When a corporation earns income which is not taxed by this State (see examples), and/or holds property that does or will produce untaxed income, and incurs interest expense which is not specifically related to any particular income or property, it shall attribute a portion of the interest expense to such untaxed income and property in determining taxable income reported to this State. A formula used for computing the amount of interest expense to be attributed to untaxed income and property is as follows:

(1) Value of assets:

(A) Value of the tax return balance sheet of assets which produce or which would produce untaxed income; *

(B) Value of all assets on the tax return balance sheet; **

(C) Determine the ratio of percent of Subparagraphs (b)(1)(A) to (B) of this Rule.

(2) Income/Profits:

(A) Gross untaxed income;

(B) Total gross profits;

(C) Determine the ratio or percentage of Subparagraphs (b)(2)(A) to (B) of this Rule.

(3) Total of the ratios or percentages determined in Subparagraphs (b)(1) and (2) of this Rule;

(4) Divide the total of Subparagraph (b)(3) of this Rule by two;

(5) Apply average percentage determined in Subparagraph (b)(4) of this Rule to the total interest expense on the return filed in this state.

(c) Examples of Untaxed Income:

(1) Dividend income classified as nonbusiness (G.S. 105-130.4);

(2) Dividend income excludable by statute (G.S. 105-130.5);

(3) Interest income classified as nonbusiness (G.S. 105-130.4);

(4) Interest income earned on United States obligations and state of North Carolina obligations;

(5) Other nonbusiness income and/or exempt income.

(d) Expenses Connected with Interest Income from United States Obligations - Under G.S. 105-130.5(b)(1), interest income from obligations of the United States or its possessions is excludable from North Carolina taxable income to the extent such income is excludable in federal taxable income. Since federal taxable income is in effect a net income, expenses incurred in producing the exempt income must be determined and subtracted from the gross amount earned during a taxable period before the deduction is made in computing the state taxable income. The basis for requiring this adjustment to exempt income is based on federal case law [First National Bank of Atlanta v. Bartow County Board of Tax Assessors, 470 U.S., 84 L. Ed. 2d 535 (1985)] and supported by an advisory opinion of the North Carolina Attorney General. In the computation of expenses related to income from United States obligations, the formula described in Paragraph (b) of this Rule may be used with respect to interest expense.

(e) Other Expenses Attributed to Nontaxable Income and to Nonbusiness Income and Property - In the determination of expenses other than interest expense attributed to untaxed income, the procedure set forth in the Federal Code for determining expenses related to foreign source income generally referred to as stewardship and supportive expenses may be used to determine the expenses allocated to untaxed income and property producing or which would produce untaxed income. Alternatively, an income formula as outlined in Paragraph (b)(2) of this Rule relating to interest expenses may be used to determine the amount of supportive function expenses attributable to untaxed income. In the determination of "supportive function expenses", direct expenses incurred exclusively in a specific identifiable taxable or nontaxable activity should be determined and excluded before application of the attribution percentage to expenses. If direct expenses are determinable for a particular activity resulting in an accurate computation of the net income or loss from such activity, the values of this activity are to be removed as elements of the ratio when computing the attribution percentage.

Note: * When the equity method of accounting is used, the increase or decrease in value as a result of such accounting method may be excluded from this value.

Note: ** Equity included in this value may be excluded and the reserve for depreciation reflected on the balance sheet may be restored to the asset value.

*History Note: Statutory Authority G.S. 105-130.4; 105-130.5; 105-262;
Eff. April 1, 1991.*

SECTION .0400 - INTEREST INCOME ON GOVERNMENT OBLIGATIONS

.0401 NORTH CAROLINA OBLIGATIONS

Net interest income received by a corporation on obligations of the State of North Carolina and any of its cities, towns or counties is exempt from income taxes imposed by this state.

*History Note: Statutory Authority G.S. 105-130.5; 105-262;
Eff. February 1, 1976;
Amended Eff. April 1, 1991.*

.0402 OBLIGATIONS OF OTHER STATES

Net interest income earned by a corporation on its investments in obligations issued by states and their political subdivisions other than the State of North Carolina, represents taxable income and is subject to this state's income tax.

*History Note: Statutory Authority G.S. 105-130.5; 105-262;
Eff. February 1, 1976;
Amended Eff. April 1, 1991.*

.0403 U.S. OBLIGATIONS

(a) Net interest income earned on bonds, notes or other obligations of the United States or its possessions is exempt from income taxation in this state so long as interest on obligations of the State of North Carolina and its political subdivisions is exempt from income taxes imposed by the United States.

(b) Net interest from obligations issued under the borrowing power of a federal land bank, a federal home loan bank, a federal intermediate credit bank, Government National Mortgage Association, Farm Home Administration, Export-Import Bank of the United States, Tennessee Valley Authority, banks for cooperatives, Student Loan Marketing Association, Federal Farm Credit Bank, Federal Financing Bank, Federal Savings and Loan Insurance Corporation and Commodity Credit Corporation is considered to be interest from obligations of the United States and is tax exempt.

*History Note: Statutory Authority G.S. 105-130.5; 105-262;
Eff. February 1, 1976;
Amended Eff. April 1, 1991; October 23, 1977.*

SECTION .0700 - BUSINESS AND NONBUSINESS INCOME

.0703 BUSINESS AND NONBUSINESS INCOME

The classification of income by the labels customarily given them, such as interest, rents, royalties, capital gains, is of no aid in determining whether that income is business or nonbusiness income. The gain or loss recognized on the sale of property, for example, may be business income or nonbusiness income depending upon the relation to the taxpayer's trade or business:

- (1) Rental income from real and tangible property constitutes business income when the rental of such property is a principal business activity of the taxpayer or the rental of the property is related to or incidental to the taxpayer's principal business activity.
- (2) As a general rule, a gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used to produce business income. However, the gain or loss will constitute non-business income providing:
 - (a) such property was subsequently utilized principally for the production of nonbusiness income for a period of at least three years prior to the disposition; and
 - (b) such property was reflected as nonbusiness on the corporate income tax returns filed for those years.
- (3) Interest income is business income if the intangible with respect to which the interest was received arises out of or was created by a business activity of the taxpayer and in those situations where the purpose for acquiring the intangible is directly related to the business activity of the taxpayer.

- (4) Dividend income is business income when dealing in securities is a principal business activity of the taxpayer. Most other dividends are nonbusiness income.
- (5) Patent and copyright royalties are business income if the patent or copyright was created or used as an integral part of a principal business activity of the taxpayer.

*History Note: Statutory Authority G.S. 105-130.4; 105-262;
Eff. February 1, 1976;
Amended Eff. April 1, 1991; October 31, 1981.*

SECTION .1800 - COMPUTING TAXABLE PERCENTAGES ON DIVIDENDS

.1801 GENERAL RULE

(a) Dividends received from a corporation and stock owned in such corporation by a corporate shareholder taxable in this state shall be taxable to the extent herein provided.

(b) After September 30 of each year, the Secretary of Revenue shall determine from the corporate income tax return filed during the year ending September 30 by each corporation required to file a return during that period, the proportion or percentage of the entire net income or net loss of the corporation allocable to North Carolina under G.S. 105-130.4. In case a corporation has net income allocable to North Carolina and a net loss from all sources everywhere, or a net loss allocable to North Carolina and net income from all sources everywhere, such proportion or percentage shall be the same as the apportionment fraction or percentage required by G.S. 105-130.4.

(c) For income tax purposes, a corporate shareholder in any corporation shall be allowed to deduct the same proportion or percentage of the dividends received by it from such corporation during its income year ending on or after September 30. Corporate shareholders shall be allowed to use the same percentage in determining the deductible portion of the fair market value of stock owned in such corporation for intangibles tax purposes. The reciprocal of this deductible percentage shall be called "taxable percentage."

(d) Dividends received from a corporation and stock owned in the corporation by a corporate shareholder taxable in this state shall be 100 percent taxable for income tax and intangibles tax purposes where the corporation does not allocate any of its income to North Carolina or is not taxable here, even though the corporation may own or control another corporation that allocates all or a part of its income to North Carolina.

(e) For purposes of this Regulation, a return shall not be considered due from the filing corporation until the fifteenth day of the third month following the close of the filing corporation's income year. For example, the due date of the return of a corporation whose income year ends November 30 shall be February 15. An income year ending on any day other than the last day of the month shall be deemed to end on the last day of the calendar month ending nearest to the last day of the corporation's income year.

*History Note: Statutory Authority G.S. 105-130.7; 105-262;
Eff. February 1, 1976;
Amended Eff. April 1, 1991.*

.1802 NO RETURN FILED IN YEAR ENDED SEPTEMBER 30

(a) As a general rule and except as described below, no deduction shall be allowed during the year for any part of any dividend received by a corporate taxpayer from a corporation which filed no income tax return with the Secretary of Revenue during such year.

(b) When a newly incorporated domestic corporation does not file a return during the first year of its operations because one is not due, the secretary shall declare that the taxable percentage of the corporation for that year shall tentatively be zero. After the corporation files its first return, a correct taxable percentage shall be determined from the return and if it is materially different from the tentative taxable percentage previously determined, the secretary may use that percentage for the first year in redetermining the income tax and intangibles tax liabilities of the corporation's shareholders. The secretary shall notify the corporation, the intangibles tax division, the individual income tax division and the corporate income tax division of this change in taxable percentage so that necessary adjustments may be made in the income tax and intangibles tax returns of the corporation's shareholders.

(c) When a newly domesticated foreign corporation does not file a return during the first year of its operations because one is not due, the secretary shall declare that the taxable percentage of such corporation for that year shall tentatively be 100 percent. After the corporation files its first return, a

correct taxable percentage shall be determined from that return and if it is materially different from the tentative taxable percentage previously determined, the secretary may use such percentage for the first year in redetermining the income tax and intangibles tax liabilities of the corporation's shareholders. The secretary shall notify the corporation, the intangibles tax division, the individual income tax division and the corporate income tax division of this change in taxable percentage so that necessary adjustments may be made in the income tax and intangibles tax returns of the corporation's shareholders.

(d) In case a corporation does not file a return during the current year because of an extension of its filing date, the secretary may tentatively use for the current year the taxable percentage of the corporation as determined for the immediately preceding year. After the corporation files the extended return, a correct taxable percentage shall be determined from such return and if it is materially different from the tentative taxable percentage previously determined, the secretary may use that percentage in redetermining the income tax and intangibles tax liabilities of the corporation's shareholders. The secretary shall notify the corporation, the intangibles tax division, the individual income tax division and the corporate income tax division of this change in taxable percentage so that necessary adjustments may be made in the income tax and intangibles tax returns of the corporation's shareholders.

*History Note: Statutory Authority G.S. 105-130.7; 105-262;
Eff. February 1, 1976;
Amended Eff. April 1, 1991.*

.1803 TWO RETURNS FILED BY A CORPORATION DURING TWELVE MONTH PERIOD

If a corporation files two income tax returns that are due during a year because of a change in its income year, the two returns shall be treated as one return in determining the proportion or percentage of such corporation's net income or net loss allocable to North Carolina under G.S. 105-130.4.

*History Note: Statutory Authority G.S. 105-130.7; 105-262;
Eff. February 1, 1976;
Amended Eff. April 1, 1991.*

.1804 CHANGE IN NAME OR IN STATE OF INCORPORATION

If there is a change only in the name of a corporation or in its state of incorporation, and the surviving corporation is the same operating entity that existed prior to this change, the proportion or percentage of the corporation's net income or net loss allocable to North Carolina under G.S. 105-130.4 shall be determined from the return filed and due to be filed by the corporation during the year.

*History Note: Statutory Authority G.S. 105-130.7; 105-262;
Eff. February 1, 1976;
Amended Eff. April 1, 1991.*

SECTION .2000 - EXTENSION OF TIME FOR FILING RETURN

.2001 AUTOMATIC EXTENSION

.2002 APPLICATION FOR AN ADDITIONAL EXTENSION

*History Note: Statutory Authority G.S. 105-262; 105-263;
Eff. February 1, 1976;
Amended Eff. November 1, 1987; October 23, 1977;
Repealed Eff. April 1, 1991.*

.2004 APPLICATION FOR EXTENSION

(a) An extension of time to file the franchise and income tax return may be granted for seven months providing the full amount of franchise tax and income tax anticipated to be due is paid with the timely filed extension application. The extension will be granted automatically provided:

- (1) the total tax is remitted with the application form; and
- (2) the corporation's records reflect no delinquent returns or outstanding tax liability.

(b) Form CD-419 is the application for extension form that must be filed before an extension of time to file the return can be granted. The application should be completed in duplicate. The original should be filed with the corporate income and franchise tax division on or before the 15th day of the third month following the close of the income year and the duplicate copy attached to the return when

filed. An approved copy of the application will not be returned to the taxpayer. Payment of tax is required as follows:

Franchise Tax - One hundred percent of the amount of franchise tax expected to be due for the taxable year must be paid with the extension application filed.
Income Tax - One hundred percent of the amount of income tax expected to be due after deducting estimated income tax payments made during the corporation's taxable year must be paid with the extension application filed.

*History Note: Statutory Authority G.S. 105-262; 105-263;
Eff. April 1, 1991.*

SECTION .2100 - DISSOLUTIONS AND WITHDRAWALS

.2101 DISSOLUTIONS

(a) The "Business Corporation Act" provides for the dissolution of corporations immediately upon the effective date of filing the articles of dissolution with the Secretary of State. Although a tax clearance is no longer a part of the Secretary of State's dissolution process, this in no way relieves the corporation of its liability to file all tax reports and returns due and pay all taxes due the Department of Revenue. The Department will continue to notify a corporation of any unfilled tax requirements.

(b) After the end of the year in which dissolution occurs, a dissolved corporation is not subject to the annual franchise tax unless the corporation engages in business activities not appropriate to winding up and liquidating its business and affairs.

(c) A corporation which has been suspended pursuant to G.S. 105-230 for failure to meet tax requirements and which has not been reinstated will be dissolved automatically at the end of five years from the date of suspension pursuant to G.S. 55-114(4). Corporations that intend to dissolve in this manner (i.e., by nonpayment of franchise tax) should notify the Revenue Department in writing to the following effect: that they are out of business; that they have disposed of all of their assets; and that they desire to be dissolved by suspension for nonpayment of franchise tax. It should be pointed out, however, that suspension or dissolution under G.S. 55-114(4) in no way relieves a corporation of franchise tax liability when any property remains or where any corporate rights whatsoever are exercised.

*History Note: Statutory Authority G.S. 55-131; 55-144; 105-230; 105-262;
Eff. February 1, 1976;
Amended Eff. April 1, 1991.*

.2102 WITHDRAWALS

(a) Before a foreign corporation is permitted to withdraw its certificate of authority to do business in North Carolina, it must file all tax reports and returns due and pay all taxes due. The Revenue Department is required to make a certification of such fact to the Secretary of State before withdrawal is permitted. The same general procedure followed with respect to dissolution, of notifying a corporation of any unfilled tax requirements, will also be followed for corporations withdrawing from North Carolina.

(b) A corporation which is dissolving or withdrawing is required to file an income tax return for the then current year within 75 days after the close of business in this state. In this final return, the corporation must include in income any unrealized, deferred or unreported profit from installment sales and pay the tax due with such return before its dissolution or withdrawal is approved.

*History Note: Statutory Authority G.S. 55-131; 55-144; 105-230; 105-262;
Eff. February 1, 1976;
Amended Eff. April 1, 1991.*

SECTION .2400 - DOMESTIC INTERNATIONAL SALES CORPORATION

.2405 EARNINGS OF DISC NOT PREVIOUSLY TAXED

*History Note: Statutory Authority G.S. 105-130.1; 105-130.6; 105-130.15; 105-130.16; 105-262;
Eff. November 1, 1984;*

Repealed Eff. April 1, 1991.

CHAPTER 6 - INDIVIDUAL INCOME TAX DIVISION

SUBCHAPTER 6B - INDIVIDUAL INCOME TAX

SECTION .0100 - FILING INDIVIDUAL INCOME TAX RETURNS

.0116 DEDUCTIONS FROM FEDERAL TAXABLE INCOME

Federal taxable income must be decreased by the following deductions to the extent the amounts are included in Federal gross income:

- (1) Interest upon obligations of the United States or its possessions;
Interest earned on obligations that are merely backed or guaranteed by the United States Government will not qualify for deduction from an individual's income. The deduction from income will not apply to distributions which represent gain from the sale or other disposition of the securities, nor to interest paid in connection with repurchase agreements issued by banks and savings and loan associations.
- (2) Interest on bonds, notes, and other obligations of the State of North Carolina or any of its political subdivisions;
- (3) Interest on obligations and gain from the sale or disposition of obligations if North Carolina law under which the obligations were issued specifically exempts the interest or gain;
- (4) Social Security benefits received under Title II of the Social Security Act and Railroad Retirement benefits received under the Railroad Retirement Act of 1937;
- (5) Refunds of State, local, and foreign income taxes;
- (6) Up to four thousand dollars (\$4,000) in retirement benefits from one or more Federal, state, or local government retirement plans;
- (7) Up to two thousand dollars (\$2,000) in retirement benefits from one or more private retirement plans;
 - (a) If an individual receives Federal, state, or local government retirement benefits and also receives other qualified retirement benefits, the total deduction is limited to four thousand dollars (\$4,000). For married couples filing a joint return, the maximum dollar amount of retirement benefits that may be deducted from Federal taxable income applies separately to the benefits received by each spouse, so that the maximum deduction on a joint return is eight thousand dollars (\$8,000).
 - (b) If an individual received retirement benefits during the year from one or more private retirement plans other than state, local, or Federal government retirement plans, he may deduct the amount received or two thousand dollars (\$2,000), whichever is less. Married individuals filing a joint return where both received such retirement benefits may each deduct up to two thousand dollars (\$2,000) for a potential total deduction of four thousand dollars (\$4,000).
 - (c) "Retirement benefits" are amounts paid to a former employee or to a beneficiary of a former employee under a written retirement plan established by the employer to provide payments to an employee or beneficiary after the end of the employee's employment with the employer where the right to receive the payment is based upon the employment relationship. For self-employed individuals, retirement benefits are amounts paid to an individual, or beneficiary under a written retirement plan established by the individual to provide payments after the end of self-employment. Retirement benefits also include amounts received from an individual retirement account or from an individual retirement annuity (IRA), both of which are described in Section 408 of the Internal Revenue Code. An individual is not required to have ceased employment to qualify for the two thousand dollar (\$2,000) deduction for distributions from an individual retirement account or an individual retirement annuity.
 - (d) The deduction for retirement benefits is allowed only to the extent the benefits are included in federal gross income. If an individual elects to roll-over the distribution from his employer's plan or from his individual retirement account, no deduction is allowed since the amount rolled over is not included in gross income.
 - (e) A change in the structure of a corporate employer which causes a distribution to be paid to the employee from the employer's retirement plan does not entitle the employee to claim the deduction for retirement benefits from such distribution. For example, Company A is merged with Company B. An employee of A continues to work for the merged company. During 1989, the employee received a distribution of five thousand dollars (\$5,000) representing his total credit

in the non-contributory retirement plan of Company A. The employee would not be entitled to the two thousand dollar (\$2,000) deduction since he had not ceased employment.

- (f) Since short-term disability benefits from the Disability Income Plan of North Carolina administered for the benefit of North Carolina teachers and State employees are not paid to a former employee under a retirement plan after the end of the employee's employment, the benefits are not subject to the four thousand dollar (\$4,000) deduction from Federal taxable income. Long-term disability benefits are payable after the conclusion of the short-term disability period or after salary continuation payments cease, whichever is later. Recipients of long-term disability benefits under the Disability Income Plan of North Carolina are former employees and they are entitled to the four thousand dollar (\$4,000) deduction from Federal taxable income.
- (g) Benefits paid to Federal civil service employees who become disabled prior to becoming age 60 upon separation from service are paid to a former employee under a retirement plan after the end of the employee's employment and are subject to the four thousand dollar (\$4,000) deduction from Federal taxable income.
- (h) Survivors of a member of the armed forces who receive benefits from the Retired Serviceman's Family Protection Plan or the Survivor's Benefits Plan as the result of taking a reduction in retirement pay are subject to the deduction of up to four thousand dollars (\$4,000) from Federal taxable income;
- (8) The amount of North Carolina inheritance tax paid that is attributable to an item of income in respect of a decedent.
The deduction from Federal taxable income is determined by multiplying the amount of North Carolina inheritance tax paid on all property transferred to the particular beneficiary, less the North Carolina inheritance tax paid if the item of income in respect of a decedent had not been included, by a fraction, the numerator of which is the income in respect of a decedent the beneficiary included in Federal gross income, as adjusted, and the denominator of which is the total income in respect of a decedent transferred to the beneficiary;
- (9) Income earned by an enrolled member of the Eastern Band of Cherokee Indians or other federally recognized tribes if such income is derived from activities on the Cherokee reservation while the member resided on the reservation.

*History Note: Statutory Authority G.S. 105-134.6(b); 105-262;
Eff. June 1, 1990;
Amended Eff. April 1, 1991.*

SECTION .3500 - PARTNERSHIPS

.3513 NONRESIDENT PARTNERS

(a) When an established business in North Carolina is owned by a partnership having one or more nonresident members, the managing partner is responsible for reporting the distributive share of the income of each nonresident partner and is required to compute and pay the tax due for each nonresident partner. The tax rate is six percent of the nonresident partner's share of income up to twelve thousand seven hundred fifty dollars (\$12,750), plus seven percent of the income over twelve thousand seven hundred fifty dollars (\$12,750). The manager is authorized by statute to withhold the tax due from each nonresident partner's share of the partnership net income. Payment of the tax on behalf of nonresident corporate partners does not relieve the corporation from filing corporate income tax and franchise tax returns; however, credit for the tax paid by the managing partner may be claimed on the corporate returns. Although a partnership may treat guaranteed payments to a partner for services or for use of capital as if they were paid to a person who is not a partner, such treatment is only for purposes of determining its gross income and deductible business expenses. For other tax purposes, such guaranteed payments are treated as a partner's distributive share of ordinary income. In determining the allowable North Carolina deductions from Federal taxable income, do not include a partner's salary, interest on a partner's capital account, partner relocation and mortgage interest differential payments, or payments to a retired partner regardless of whether they were determined without regard to current profits. These types of payments are treated as part of the partner's share of the partnership income. A nonresident partner is not required to file a North Carolina individual income tax return when the only income from North Carolina sources is the nonresident's share of income from a partnership doing business in North Carolina and the manager of the partnership has reported the income of the nonresident partners and paid the tax due. A nonresident partner may file an individual income

tax return and claim credit for the tax paid by the manager of the partnership if the payment is properly identified on the individual income tax return.

(b) If a partnership has one or more nonresident partners and is operating in one or more states other than North Carolina, the partnership's net income attributable to North Carolina for the purpose of determining the North Carolina income tax liability of a nonresident partner must be determined by multiplying the total net income of the partnership by the apportionment percentage computed in Schedule B of Form D-403. This means that in the allocation of net income of a nonresident partner to North Carolina the applicable allocation formula prescribed for corporations is used. This allocation of income does not affect the reporting of partnership income by the resident partner because he is taxable on his share of the net income of the partnership whether or not any portion of it is attributable to another state or country.

History Note: Statutory Authority G.S. 105-134.5(d); 105-154; 105-262;

Eff. February 1, 1976;

Amended Eff. April 1, 1991; February 1, 1991; December 1, 1990; June 1, 1990.

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES CODIFIED

MARCH 1991

AGENCY			ACTION TAKEN
<u>DEPARTMENT OF ADMINISTRATION</u>			
1	NCAC	4G .0217	Amended
		6B .0212	Adopted
<u>DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT</u>			
4	NCAC	1J .0102	Amended
		.0201	Amended
		.0501	Adopted
	18	.0304	Amended
		.0306	Amended
<u>DEPARTMENT OF CORRECTION</u>			
5	NCAC	2F .0604	Amended
<u>DEPARTMENT OF HUMAN RESOURCES</u>			
10	NCAC	3C .1901	Amended
		.1902 - .1903	** Amended
		.1904 - .1905	Amended
		.1910	** Amended
		.1912	** Amended
		.1913 - .1914	Repealed
		.1915	** Amended
		.1916	Amended
		.1918	** Amended
		.1922	Amended
		.1926	Amended
	3H	.0107	Repealed
		.0108	** Amended
		.0315	Amended
		.0505	** Amended
		.0507	** Amended
		.0508 - .0509	Repealed
		.0510	Amended
		.0511	** Amended
		.0709	Amended
		.0711	** Adopted
		.1108 - .1109	** Adopted
		.1501	Amended
		.1612	Amended
	3R	.0317	Amended
		.1113	** Amended
		.1115 - .1116	** Amended
		.1117	Amended
		.1118	** Amended
		.1119	Amended
		.1120	** Amended

	.1124	** Adopted
14C	.1147	* Correction
14M	.0601	* Correction
	.0701	* Correction
42B	.0902 - .0903	Repealed
	.1302	Amended
45		* Correction
47B	.0404 - .0405	Amended
50B	.0407	Amended

DEPARTMENT OF INSURANCE

11	NCAC	12	.0904	** Adopted
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DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

15A	NCAC	2B	.0104	** Amended
			.0211	** Amended
			.0212	Amended
			.0303	** Amended
		2D	.0901 - .0902	Amended
			.0912 - .0913	** Amended
			.0925 - .0926	Amended
			.0928 - .0930	Amended
			.0933	Amended
			.0943	** Amended
		7H	.1103	Amended
			.1203	Amended
			.1303	Amended
			.1403	Amended
			.1503	Amended
			.1603	Amended
			.1703	Amended
			.1803	Amended
			.1903	Amended
		7J	.0204	Amended
			.0404 - .0406	Amended
		13B	.1202	Amended
			.1204	** Amended
		18A	.0101	* Correction
			.0108	* Correction
			.0203	* Correction
			.0301	* Correction
			.0401	* Correction
			.0420	* Correction
			.0429	* Correction
			.0501	* Correction
			.0601	* Correction
			.0612 - .0613	* Correction
			.0701	* Correction
			.0703 - .0705	* Correction
			.0801	* Correction
			.1001	* Correction
			.1020	* Correction
			.1301	* Correction
			.1311	* Correction
			.1317	* Correction
			.1320 - .1321	* Correction
			.1406	* Correction

	.1410	* Correction
	.1417	* Correction
	.1805 - .1806	* Correction
	.1814	* Correction
	.1818	* Correction
	.1956	* Correction
	.2605 - .2609	* Correction
	.2612	* Correction
	.2615	* Correction
	.2617	* Correction
	.2623	* Correction
	.2634 - .2636	* Correction
	.2638	* Correction
	.2643	* Correction
18B	.0101	* Correction
	.0104	* Correction
	.0106	* Correction
	.0203 - .0204	* Correction
	.0207 - .0208	* Correction
18C	.0102	* Correction
	.0201	* Correction
	.0303	* Correction
	.0307	* Correction
	.0401 - .0403	* Correction
	.0405	* Correction
	.0706	* Correction
	.0802 - .0804	* Correction
	.0907	* Correction
	.1106	* Correction
	.1203	* Correction
	.1301	* Correction
	.1502	* Correction
	.1505	* Correction
	.1507 - .1508	* Correction
	.1510	* Correction
	.1512 - .1513	* Correction
	.1515 - .1516	* Correction
	.1519	* Correction
	.1522 - .1523	* Correction
	.1525	* Correction
	.1534	* Correction
	.1601 - .1603	* Correction
	.1605	* Correction
	.1608	* Correction
	.1612 - .1613	* Correction
	.1802	* Correction
	.1804	* Correction
	.1902	* Correction
	.1906	* Correction
	.1911	* Correction
18D	.0403	Amended
19A	.0102	* Correction
	.0201	* Correction
	.0203	* Correction
	.0301	* Correction
	.0403	* Correction
	.0405	* Correction
	.0501 - .0503	* Correction
	.0602	* Correction

19C	.0102	* Correction
19D	.0103	* Correction
	.0203	* Correction
	.0405 - .0408	* Correction
19F	.0103	* Correction
19H	.0301	* Correction
	.0907	* Correction
19I	.0105	* Correction
20D	.0201 - .0207	* Correction
	.0211	* Correction
	.0213 - .0215	* Correction
	.0219 - .0220	* Correction
	.0223	* Correction
	.0227	* Correction
	.0229 - .0230	* Correction
21B	.0108	* Correction
	.0204 - .0205	* Correction
21C	.0101	* Correction
	.0103 - .0104	* Correction
	.0201	* Correction
	.0204 - .0205	* Correction
	.0301 - .0303	* Correction
	.0310 - .0311	* Correction
	.0402	* Correction
21D	.0706	* Correction
	.0904	* Correction
	.1003	* Correction
21E	.0104 - .0107	* Correction
	.0303	* Correction
	.0305 - .0306	* Correction
	.0309	* Correction
21F	.0301 - .0302	* Correction
	.0401	* Correction
	.0404 - .0405	* Correction
	.0410	* Correction
	.0501	* Correction
	.0505 - .0508	* Correction
	.0510 - .0514	* Correction
	.0603	* Correction
	.0801 - .0803	* Correction
	.1009	* Correction
	.1012	* Correction
21G	.0103 - .0105	* Correction
	.0206	* Correction
	.0403	* Correction
	.0405 - .0406	* Correction
	.0504	* Correction
	.0507 - .0509	* Correction
21H	.0110	* Correction
	.0113	* Correction
	.0115 - .0118	* Correction
	.0203	* Correction
	.0209	* Correction
	.0303	* Correction
	.0311	* Correction
23	.0308 - .0309	* Correction
25	.0210 - .0213	* Correction

SECRETARY OF STATE

FINAL RULES

18	NCAC	6	.1901	** Adopted
			.1902 - .1903	Adopted
			.1904 - .1906	** Adopted

BOARD OF MEDICAL EXAMINERS

21	NCAC	32B	.0101	** Amended
			.0315 - .0316	** Adopted
		32N	.0001 - .0004	Adopted
			.0005	** Adopted

MIDWIFERY JOINT COMMITTEE

21	NCAC	33	.0006	Adopted
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BOARD OF NURSING

21	NCAC	36	.0501 - .0503	Adopted
			.0506	Adopted

BOARD OF PHARMACY

21	NCAC	46	.2108	Adopted
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OFFICE OF STATE PERSONNEL

25	NCAC	1A	.0005	Adopted
		1B	.0436	** Amended
		1D	.0510	Amended
			.0707	** Amended

The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 143B-30.2(d).

ECONOMIC AND COMMUNITY DEVELOPMENT

Hazardous Waste Management Commission

4 NCAC 18 .0309 - Final Site

ARRC Objection 1/18/91

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Adult Health

15A NCAC 16A .0804 - Financial Eligibility

ARRC Objection 1/18/91

15A NCAC 16A .0806 - Billing the HIV Health Services Program

ARRC Objection 1/18/91

Coastal Management

15A NCAC 7J .0409 - Civil Penalties

ARRC Objection 1/18/91

15A NCAC 7J .1109 - Permit Fee

ARRC Objection 1/18/91

Environmental Health

15A NCAC 18C .0102 - Definitions

ARRC Objection 10/18/90

15A NCAC 18C .1532 - Variances and Exemptions

ARRC Objection 10/18/90

15A NCAC 18C .1534 - Max Contaminant Levels for Coliform Bacteria

ARRC Objection 10/18/90

15A NCAC 18C .2001 - General Requirements

ARRC Objection 10/18/90

15A NCAC 18C .2002 - Disinfection

ARRC Objection 10/18/90

15A NCAC 18C .2003 - Filtration

ARRC Objection 10/18/90

15A NCAC 18C .2004 - Analytical and Monitoring Requirements

ARRC Objection 10/18/90

15A NCAC 18C .2005 - Criteria for Avoiding Filtration

ARRC Objection 10/18/90

Marine Fisheries

15A NCAC 3C .0311 - Cancellation

ARRC Objection 9/20/90

Agency Revised Rule

Obj. Removed 10/18/90

15A NCAC 3O .0203 - Shellfish Lease Application Processing

ARRC Objection 8/16/90

Agency Revised Rule

Obj. Removed 9/20/90

Wildlife Resources Commission

15A NCAC 10H .0302 - Minimum Standards

ARRC Objection 9/20/90

Agency Revised Rule

Obj. Removed 10/18/90

HUMAN RESOURCES

Facility Services

*10 NCAC 3V .0303 - Insurance Required**ARRC Objection 11/14/90*

Individual and Family Support

*10 NCAC 42B .1201 - Personnel Requirements**ARRC Objection 1/18/91**10 NCAC 42C .2001 - Qualifications of Administrator**ARRC Objection 1/18/91**10 NCAC 42C .2002 - Qualifications of Supervisor-in-Charge**ARRC Objection 1/18/91**10 NCAC 42C .2006 - Qualifications of Activities Coordinator**ARRC Objection 1/18/91**10 NCAC 42C .3301 - Existing Building**ARRC Objection 11/14/90**10 NCAC 42D .1401 - Qualifications of Administrator/Co-Administrator**ARRC Objection 11/14/90***INSURANCE**

Life: Accident and Health Division

*11 NCAC 12 .0904 - Requirements for Utilization Review**ARRC Objection 12/20/90**Agency Revised Rule**Obj. Removed 1/18/91***LICENSING BOARDS AND COMMISSIONS**

Medical Examiners

*21 NCAC 32M .0007 - Termination of NP Approval**ARRC Objection 11/14/90*

Nursing, Board of

*21 NCAC 36 .0217 - Revocation, Suspension, or Denial of License
No Response from Agency**ARRC Objection 12/20/90
1/18/91**21 NCAC 36 .0504 - Certificate of Registration**ARRC Objection 1/18/91**21 NCAC 36 .0505 - General and Administrative Provisions**ARRC Objection 1/18/91**21 NCAC 36 .0507 - Fees**ARRC Objection 1/18/91*

Physical Therapy

*21 NCAC 48C .0102 - Responsibilities
Agency Returned Rule Unchanged**ARRC Objection 9/20/90
No Action 10/18/90**21 NCAC 48C .0501 - Exemption for Students
Agency Returned Rule Unchanged**ARRC Objection 9/20/90
No Action 10/18/90*

Plumbing and Heating Contractors

*21 NCAC 50 .1203 - Disposition of Petitions**ARRC Objection 11/14/90**21 NCAC 50 .1207 - Request to Participate**ARRC Objection 11/14/90***SECRETARY OF STATE**

Securities Division

*18 NCAC 6 .1210 - Securities Exchs/Autod Quot. Sys. Approved/Admin
Agency Responded to Objection**ARRC Objection 12/20/90
No Action 1/18/91*

STATE PERSONNEL

25 NCAC 1B .0107 - Personnel Commission Meetings	ARRC Objection 9/20/90
25 NCAC 1B .0108 - Commission Staff	ARRC Objection 9/20/90
25 NCAC 1B .0109 - Commission Actions	ARRC Objection 9/20/90
25 NCAC 1B .0110 - Motions	ARRC Objection 9/20/90
25 NCAC 1B .0111 - Voting	ARRC Objection 9/20/90
25 NCAC 1B .0112 - Abstention	ARRC Objection 9/20/90
25 NCAC 1B .0113 - Duties of the Chairman	ARRC Objection 9/20/90
25 NCAC 1B .0114 - Order of Business	ARRC Objection 9/20/90
25 NCAC 1B .0115 - Special Meetings	ARRC Objection 9/20/90
25 NCAC 1B .0116 - Duties of Chairman Between Meetings of the Comm	ARRC Objection 9/20/90
25 NCAC 1B .0117 - Standing Special Committees	ARRC Objection 9/20/90
25 NCAC 1B .0118 - Minutes	ARRC Objection 9/20/90
25 NCAC 1B .0119 - Notice of Commission Action	ARRC Objection 9/20/90
25 NCAC 1B .0120 - Appointment of Vice-Chairman	ARRC Objection 9/20/90
Agency Withdrew Rules .0107 - .0120	10/18/90
25 NCAC 1D .0509 - Severance Salary Continuation	ARRC Objection 1/18/91
25 NCAC 1L .0201 - Purpose	ARRC Objection 9/20/90
25 NCAC 1L .0202 - Policy	ARRC Objection 9/20/90
Agency Withdrew Rules .0201 - .0202	10/18/90

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

10 NCAC 1B .0202(c) - REQUEST FOR DETERMINATION

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 1B .0202(c) void as applied in *New Hanover Memorial Hospital, Inc., Petitioner v. N.C. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent* (90 DHR 0792).

10 NCAC 1B .0202(c) - REQUEST FOR DETERMINATION

Brenda B. Becton, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 1B .0202(c) void as applied in *High Point Regional Hospital, Inc., Petitioner v. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent* (90 DHR 0770).

10 NCAC 3R .0317(g) - WITHDRAWAL OF A CERTIFICATE

Robert Roosevelt Reilly, Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .0317(g) void as applied in *Dawn Health Care, a North Carolina General Partnership, Petitioner v. Department of Human Resources, Certificate of Need Section, Respondent* (90 DHR 0296).

10 NCAC 3R .0317(g) - WITHDRAWAL OF CERTIFICATE

Michael Rivers Morgan, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .0317(g) void as applied in *Autumn Corporation, Petitioner v. N.C. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent* (90 DHHR 0321 and 90 DHHR 0318).

10 NCAC 26I .0101 - PURPOSE: SCOPE/NOTICE OF CHANGE IN LEVEL OF CARE

10 NCAC 26I .0102 - REQUESTS FOR RECONSIDERATION AND RECIPIENT APPEALS

10 NCAC 26I .0104 - FORMAL APPEALS

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rules 10 NCAC 26I .0101, 10 NCAC 26I .0102 and 10 NCAC 26I .0104 void as applied in *Linda Allred, Petitioner v. North Carolina Department of Human Resources, Division of Medical Assistance, Respondent* (90 DHHR 0940).

10 NCAC 42W .0003(c) - COUNTY DEPT OF SOCIAL SERVICES RESPONSIBILITIES

10 NCAC 42W .0005 - REPORTING CASES OF RAPE AND INCEST

The North Carolina Court of Appeals, per Judge Robert F. Orr, declared Rules 10 NCAC 42W .0003(c) and 10 NCAC 42W .0005 void as applied in *Rankin Whittington, Daniel C. Hudgins, Dr. Takey Crist, Dr. Gwendolyn Boyd and Planned Parenthood of Greater Charlotte, Inc., Plaintiffs v. The North Carolina Department of Human Resources, David Flaherty, in his capacity as Secretary of the North Carolina Department of Human Resources, The North Carolina Social Services Commission, and C. Barry McCarty, in his capacity as Chairperson of the North Carolina Social Services Commission, Defendants* [100 N.C. App. 603, 398 S.E.2d 40 (1990)].

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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